

STATE OF VERMONT
VERMONT SUPREME COURT

MARCH TERM, 2002

RULES GOVERNING DISSEMINATION OF ELECTRONIC CASE RECORDS

§ 1. Scope. These Rules govern the release of case record information held by the Vermont Judiciary, or any component thereof, in electronic form whether the record is to be released in electronic or paper form. These Rules supplement the Rules for Public Access to Court Records adopted by the Vermont Supreme Court effective May 1, 2001. In case of conflict, the Rules for Public Access to Court Records control.

§ 2. Definitions.

(a) Case Record. A judicial branch record pertaining to a particular case or controversy. Rules for Public Access to Court Records § 3(b).

(b) Electronic Case Record. An electronic record pertaining to one case or controversy or to cases which have been joined by the court.

(c) Electronic Case Record Compilation. An electronic record pertaining to more than one electronic case record.

(d) Electronic Case Record Report. An electronic case record compilation that extracts and displays data from more than one electronic case record for the purposes of providing information about the operation of the Vermont judiciary, or any of its components.

(e) Electronic Data Dissemination Contract. An agreement between the Court Administrator and any entity, except a court or court employee, that is provided information which is not publicly accessible under this policy or the Rules for Public Access to Court Records. The data dissemination contract shall specify terms and conditions, as approved by the Vermont Judiciary Technology Committee, concerning the data including but not limited to restrictions, obligations, and cost recovery.

(f) Electronic Record. A judicial branch record that exists in electronic form, irrespective of whether it also exists in physical form. Rules for Public Access to Court Records § 3(c).

(g) Public Purpose Agency. An agency or department of state or local government or a nonprofit agency whose principal function is research or to provide services to the public.

(h) Statistical Report. An electronic case record compilation which complies with § 8 of the Rules for Public Access to Court Records.

(i) VCAS. A part of the judicial branch data warehouse that delivers VTADS2 data on a case-by-case basis.

(j) Vermont Judiciary Data Warehouse. A central repository of information extracted from electronic case records in all courts and capable of creating electronic case record reports.

(k) VTADS2. The case management system used by the judicial branch to create and manage electronic case records and including the capacity to create both standardized and ad hoc electronic case record reports. VTADS2 contains docket entries, scheduling information, information about parties and lawyers and some court orders. It does not contain records filed with the court.

(l) VTADS2 Standardized Report. An electronic case records report which is produced from VTADS2 data by selection from a menu of preprogrammed reports.

§ 3. Access to Electronic Case Records

(a) The public shall have access to electronic case records from VTADS2, VCAS or a similar system, on a case by case basis, subject to the limitations specified in (b) and (c) of this section. The court administrator may provide such access from terminals at judicial branch facilities or on line from any remote location over the internet. If the court administrator provides access on line, such access shall be phased in beginning with civil cases, then criminal cases and finally family cases.

(b) The public shall not have access to the following data elements in an electronic case record with regard to parties or their family members: social security numbers; street addresses; telephone numbers; and any personal identification numbers, including motor vehicle operator's license numbers and financial account numbers. In providing access pursuant to subsection (a), the court administrator shall ensure that the above information is not provided.

(c) Except for notices, decisions and orders of the court, the public shall not have electronic access to case records filed electronically or to scanned images of the case records.

§ 4. Access to Electronic Case Record Compilations

Because these rules provide public access on a case-by-case basis, the judiciary does not provide electronic case record compilations, either in electronic or printed form, unless a compilation is an electronic case record report made publicly accessible by § 5. In enabling public access to electronic case records pursuant to this policy, the court administrator shall ensure that no person may obtain an electronic case record compilation. The court administrator may waive this policy pursuant to a data dissemination contract governed by § 6 of these rules.

§ 5. Access to Electronic Case Record Reports

(a) The public shall have access to any VTADS2 standardized report created from electronic case records provided it does not include any of the data elements specified in § 3(b). The information shall be provided in electronic or printed form at the option of the person requesting the information, but shall not be available on line.

(b) The public shall not have access to any other electronic case record report unless pursuant to a data dissemination contract governed by § 6 of these rules or pursuant to subsection (c) of this section.

(c) The court administrator may, on request, provide a non-standardized VTADS2 or data warehouse report from electronic case records, in either electronic or printed form, upon a finding that compliance with the request will not be unduly burdensome. Compliance is unduly burdensome if it may strain system capacity through extensive use of computer processing time to locate, aggregate and download data; may cause delay in services provided by the Research and Information Services unit of the Court Administrator's office or other units of the judiciary; or require extensive employee work hours to complete the report. Reports provided under this subsection may not include the data elements excluded by § 3(b) of these rules. The court administrator shall refuse a request based on a finding that the purpose of the request is to obtain personal information about litigants or other persons appearing in court, and not to obtain information about the operation of the Vermont judiciary. This subsection shall also apply to statistical reports.

(d) The court administrator shall designate the content of standardized reports from the Vermont Judiciary Data Warehouse, providing information equivalent to that of VTADS2 standardized reports but from more than one court, and make those designations available to all persons who are authorized to create data warehouse reports. Subsection (a) shall apply to such reports.

§ 6. Electronic Data Dissemination Contract

A public purpose agency may seek access to judicial branch electronic case record information not accessible to the public pursuant to these rules. The public purpose agency must identify the information requested and the proposed use of the information. In reviewing the request, the court administrator shall consider: (a) the extent to which access will result in efficiencies in the operation of a court or courts; (b) the extent to which access will enable the fulfillment of a legislative mandate; (c) the extent to which access will result in efficiencies in other parts of the justice system or in the delivery of human or educational services; (d) the extent of the need for the information; (e) the risk that the information will be misused for purposes other than those intended; and (f) the methods that will be used to ensure the security and confidentiality of the data. If the court administrator decides to grant such access, it shall be authorized only pursuant to an electronic data dissemination contract between the court administrator and the agency. At a minimum, the contract shall specify the data to which access is granted; specify the uses which the agency may make of the data; and include the agency's agreement that its

employees will access the data only for the uses specified and maintain its confidentiality as to third parties. Violation of the terms of a contract, including using data in an unauthorized manner, shall be grounds for termination of the agreement.

This section does not authorize exceptions from the Rules for Public Access to Court Records. However, the court administrator may provide a public purpose agency access to records not publicly accessible under those rules upon a finding that the agency has a specific right of access under § 2(b) of those rules.

§ 7. Procedure

All requests for information pursuant to these rules shall be made to the records custodian as defined in § 3(f) of the Rules for Public Access to Court Records. For the purposes of these rules, the court administrator is the records custodian for VCAS and the Vermont Judiciary Data Warehouse case records and reports. Unless the court administrator is the records custodian, appeals of decisions under this policy may be made to the court administrator. The decisions of the court administrator shall be final.

Reporter's Notes

These Rules can be traced to a study conducted by the Technology Committee appointed by the Vermont Supreme Court. The Committee was charged with making recommendations with regard to the direction of the court system over the next three years with a focus on technological developments affecting the court system and automation. With the move toward "electronic litigation" and enhanced court record systems, a major concern was electronic access to court records, particularly to those cases filed electronically.

As a result of the study which was approved by the Supreme Court October 13, 1998, the Court appointed a Committee to Study Public Access to Court Documents and Electronic Court Information. That Committee issued a report which included recommendations to the Court to adopt Rules for Public Access to Court Records. On October 27, 2000, the Court adopted the vast majority of the rules recommended by the Public Access Committee, to become effective May 1, 2001. The Court did not adopt three proposed recommended rules in § 6 which governed access only to electronic records. In its order of October 27, the Court established an Advisory Committee on the Rules of Public Access to Court Records to "review the operation and effectiveness of the Rules for Public Access . . . and recommend to the Supreme Court amendment to these Rules or other appropriate actions which it finds advisable." A focus of the Committee has been to consider the impact of electronic case records and internet access to judicial case records on the privacy interests and economic security of the parties. The goal of the Committee has been to protect important party interests while, at the same time, preserving the general right of public access set forth in § 4 of the Rules for Public Access.

In the meantime, the Technology Committee was meeting to implement improved systems for compiling, storage, and centralization of records and preparation of reports

from electronic records, and recommend a policy governing dissemination of electronic case records. A policy to govern access to electronic case records was adopted by the Technology Committee and submitted to the Advisory Committee on Public Access in July, 2001 for its consideration. These Rules governing access to electronic records or paper copies of electronic records are based on the policy drafted by the Technology Committee with only relatively minor modifications.

As §1 of these Rules provides, the Rules supplement, but do not supercede, the Rules on Public Access. These Rules create additional limitations on access to electronic records or a printed copy of a judicial record obtained from an electronic record. The Rules cover the actual filings and orders of the court, parts of the judicial record itself, as well as reports or compilations generated by the court system from the record itself. Examples of the latter are docket sheet entries and the reports and compilations defined in § 2 of these Rules. The Rules are thus drafted to reflect the fact that the judiciary maintains or will maintain two levels of electronic records, one of which might be described as the primary case documents which consist of the party filings and orders of the court. The second level of electronic records consists of the docket sheets, reports and compilations prepared by the court system. See §§ 4-6. Privacy concerns are particularly acute with respect to the primary level records because of the wealth of sensitive personal, financial and identifying data contained in these records. With regard to the second level records, much of the data which appears in primary records and affects privacy and security issues will not be included in reports and compilations. Some such data will necessarily be included in such second level records if the records are to be useful for judicial record keeping and planning purposes, but that data can be redacted prior to granting public access in a manner which balances public access and party interests. See § 3(b).

To the extent possible, these Rules were drafted to anticipate developments in the planning for or implementation of electronic record keeping undertaken by the Vermont judiciary. For example, the Vermont Judiciary Data Warehouse defined in § 2(j) was under construction at the time these Rules were adopted and, when completed, will supercede the report generation function of VTADS2 defined in § 2(k). Similarly, electronic filing and scanning of records referenced in § 3(c) was not implemented at the time the Rules were adopted. When the courts implement a system for electronic primary case records, the system will be implemented in stages, beginning with categories of cases which raise the least problematic privacy concerns. At the time these Rules were adopted, only the docket sheet entries were available electronically, but not in all Vermont courts. Docket sheet entries were available from terminals at or near the clerks' offices in approximately half the courts, typically in the high volume courts. The policy reflected in § 3, especially § 3(c), should be revisited when primary case record documents are available electronically.

Public access to record compilations and reports is governed by §§ 4-6 of these rules. The former is more circumscribed. See §§ 4, 5(c) & 6. The public shall have access to standardized reports, subject to redaction of the data elements enumerated in § 3(b). See § 4(a). Non-standardized reports can be requested pursuant to § 5(c). This criteria in § 5(c) are in part based upon Rule 15(f) of the Washington State Court Rules governing data

dissemination of computer-based court information (JISCR). Similarly, § 6 governing data dissemination contracts is based upon the Washington State policy. See JISC Data Dissemination Policy § IID, amended February 27, 1998.

These rules, as adopted, are prescribed and promulgated to become effective on June 1, 2002.

The Chief Justice is authorized to report these rules to the General Assembly in accordance with the provisions of 12 V.S.A. § 1.

Dated in Chambers at Montpelier, Vermont, this 6th day of March, 2002.

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice